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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,850	04/13/2001	Ulrich Zimmermann	113737.6	2752

7590

10/22/2002

Robert A Koons Jr
Pepper Hamilton
3000 Two Lagan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799

EXAMINER

NAFF, DAVID M

ART UNIT

PAPER NUMBER

1651

DATE MAILED: 10/22/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/42850

Applicant(s)

Zimmermann shp

Examiner

Haff

Group Art Unit

1657

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 7/31/02
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 29-42 + 52 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 29-42 + 52 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). Filed 6/21/01 ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892 ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948 ☐ Other _____

Office Action Summary

claim, and limit claim 42 to alginate-producing fresh-water or salt-water algae.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- 5 (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said
- 10 subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
- This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the
- 15 time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential
- 20 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 29-42 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmermann et al (DE 42 04 012 A1) or Klock et al (AP).

The claims are drawn to a process of producing purified alginate and to the resultant alginate. The process involves extracting algae with a

25 complex forming agent, filtering, precipitating an alginate, collecting and dewatering, and repeating the steps at least once.

Zimmermann et al and Klock et al disclose essentially a process as claimed to produce purified alginate except that Zimmermann et al and Klock et al disclose the use of barium as a complex forming agent, and

30 the claims require repeating the process steps at least once.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

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DMN
10/21/02


DAVID M. NAFF
PRIMARY EXAMINER
ART UNIT 12857

It would have been obvious to repeat the purification steps of Zimmermann et al or Klock et al since repeating the steps would have been expected to provide a more pure alginate. The present claims except for 30 and claims dependent thereon do not require a complex forming agent other than barium. As to claim 30 and claims dependent thereon that require ethylene diamine tetra acetic acid as the agent, Klock et al (page 639, line 10 under "Results") and Zimmermann et al (col 3, line 8) indicate that this chelating agent will complex alginate, and it would have been obvious to use this complex agent in place of barium when considering barium toxic.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Naff whose telephone number is (703) 308-0520. The examiner can normally be reached on Monday-Thursday and every other Friday from about 8:30 AM to about 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, a message can be left on voice mail.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn, can be reached at telephone number (703) 308-4743.

The fax phone number is (703) 872-9306 before final rejection or (703) 872-9307 after final rejection.

In a response of 7/31/02 to a restriction requirement of 7/1/02, applicants elected Group I claims 29-42 and 52 without traverse and canceled nonelected claims 43-51 and 53-55.

Claims examined on the merits are 29-42 and 52.

- 5 The amendment filed 4/13/01 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the insertion at page 3, line 35.
- 10 Support for the two paragraphs inserted on page 3 is not readily apparent in the original specification and claims. The specific pages and lines where support occurs should be pointed out.

Applicant is required to cancel the new matter in the reply to this Office Action.

- 15 The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 20 Claim 42 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- The recital of "or other alginate-producing fresh-water or salt-water algae is confusing. Using such an all encompassing alternative as
- 25 an alternative to brown algae makes the claimed invention unclear. The claim should delete brown algae, and claim brown algae in a dependent